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IN THE

SUPREME COURT OF THE UNITED STATES

(OCTOBER TERM, 1964)

No. 324

L. N. WILSON AND W. C. WHITE,
Petitioners,

versus

STATE OF LOUISIANA,
Respondent.

A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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INDEX.

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	3
CONCLUSION	10
CERTIFICATE	10
APPENDICES:	
A. Statutes	11
B. Opinion Below	12

CASES CITED.

Boyd v. United States, 116 U. S. 616, 6 S. Ct. 624	6
Fahy v. Connecticut, 375 U. S. 85, 84 S. Ct. 229	7
Ker v. State of California, 374 U. S. 23, 83 S. Ct. 1623	6
Lyon v. Oklahoma, 322 U. S. 596	4
Malinski v. New York, 324 U. S. 401	4
Mapp v. Ohio, 367 U. S. 643	6
Rogers v. Richmond, 365 U. S. 534	4, 5
State v. Doucet, 199 La. 276, 5 So. (2d) 894	8
State v. Lebleu, 14 So. (2d) 17, 203 La. 337	9
State v. Pickens, 245 La. 680, 160 So. (2d) 577	6
United States v. Waller, 126 Fed. Supp. 537	4

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L. N. Wilson and W. C. White, petitioners herein, respectfully pray that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of Louisiana entered on February 23, 1965, affirming the conviction of the defendants for theft of a hog, in violation of R.S. 14:67.1, in the Seventh Judicial District Court for the Parish of Catahoula, Louisiana.

OPINION BELOW.

The opinion of the Supreme Court of the State of Louisiana is reported at 171 So. (2d) 664, 247 La. 405, and appears in Appendix "B", p. 12.

JURISDICTION.

The judgment of the Supreme Court of Louisiana was entered on January 18, 1965. An application for rehearing therein was denied on February 23, 1965. An order extending the time in which to petition for a writ of certiorari to and including June 23, 1965, was granted by this Court on May 24, 1965. The jurisdiction of this Court is invoked under 26 U. S. C. A., Section 1257 (3). The constitutional question was originally raised in the trial Court and was assigned as error to the Supreme Court of Louisiana, which acknowledged defendants' contentions but refused to rule thereon because of a procedural statute of the State.

QUESTIONS PRESENTED.

May the Supreme Court of Louisiana, for technical reasons based upon procedural statutes and jurisprudence of the State, refuse to consider the record of an appeal based on violations of rights guaranteed by the Constitution of the United States and of the State of Louisiana? Do rights guaranteed by the Federal and State Constitutions prevail over procedural requirements of State statutes?

CONSTITUTIONAL PROVISIONS INVOLVED.

The constitutional provisions involved are the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

STATUTORY PROVISIONS INVOLVED.

The statute involved in the original trial was R.S. 14:67.1, *infra*, Appendix "A", p. 11. The statute involved

in the appeal to the Supreme Court of the State of Louisiana was R.S. 15:502, *infra*, Appendix "A", p. 11.

STATEMENT OF THE CASE.

Petitioners were charged in an indictment dated April 20, 1964, with theft of a hog in violation of L. S. A.-R.S. 14:67.1. They pleaded not guilty and were tried by jury in the Seventh Judicial District Court in and for the Parish of Catahoula, State of Louisiana, on May 18, 1964. They were found guilty and each was sentenced to serve one year in the Louisiana State Penitentiary at Angola, Louisiana.

The petitioners appealed the conviction on the ground that their constitutional rights had been violated by the arresting officers through illegal search and seizure and through failure of the arresting officers to advise one of the defendants of his constitutional right not to testify against himself. The Supreme Court of Louisiana refused to consider the record which would prove these contentions for the reason that the established jurisprudence in the State of Louisiana is that they will consider only those matters incorporated in bills of exception even though the complete transcript of the trial is incorporated in the record of the case. No bills of exception were reserved in this case.

REASONS FOR GRANTING WRIT.

The Supreme Court of the State of Louisiana has held that, despite a contention by the defendants that they are entitled to a new trial on the ground that certain of their constitutional rights were violated, it may refuse to examine the record and evidence in this case for the rea-

son that no bills of exception were reserved and perfected in the trial Court.

In so holding, the Court below relegates the United States Constitution to a rule of evidence subordinate to the Revised Statutes of the State of Louisiana. This is contrary to the holding of the Federal Court in *United States v. Waller*, 126 Fed. Supp. 537, wherein a new trial was granted on constitutional grounds, notwithstanding the fact that Louisiana law required that bills of exception be taken and perfected and none were in the record.

The constitutional rights must prevail over the procedural statute and it is error to deprive the defendants of these rights because the State Supreme Court is prohibited by Statute from an examination of the record.

This question, we submit, was erroneously resolved by the Court below.

I.

Reversal is Required as a Means of Enforcing the Constitutional Guarantees Against Unlawful Searches and Seizures, and Failure to Advise an Accused of His Right not to Testify Against Himself.

This Court has repeatedly held that enforcement of rights guaranteed by the Fifth and Fourteenth Amendments requires reversal of all criminal convictions where unlawfully obtained confessions are admitted into evidence. *Rogers v. Richmond*, 365 U. S. 534, 545 (1960); *Malinski v. New York*, 324 U. S. 401, 404 (1944); *Lyons v. Oklahoma*, 322 U. S. 596, 597 (1943). For example in *Lyons v. Oklahoma*, 322 U. S. 596, this Court said:

"Whether or not the other evidence in the record is sufficient to justify the general verdict of guilty is not necessary to consider. The confession was introduced over defendant's objection. If such admission of confession denied a constitutional right to defendant the error requires reversal." 322 U. S. 596, footnote page 597.

The same conclusion was reached in *Rogers v. Richmond*, 365 U. S. 534:

"Our decisions under that Amendment (i.e the 14th) have made clear that convictions following the admission into evidence of confessions which are involuntary, i.e. the product of coercion, either physical or psychological, cannot stand."

"Indeed, in many of the cases in which the command of the Due Process Clause has compelled us to reverse state convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed. Despite such verification, confessions were found to be the product of constitutionally impermissible methods in their inducement. Since a defendant had been subjected to pressures to which * * * an accused should not be subjected, we were constrained to find that the procedures leading to his conviction had failed to afford him that due process of law which the Fourteenth Amendment guarantees." § 65 U. S. 534 at page 540.

"A defendant has the right to be tried according to the substantive and procedural due process

> requirements of the Fourteenth Amendment * * * To the extent that in the trial of Rogers evidence was allowed to go to the jury on the basis of standards that departed from constitutional requirements, to that extent he was unconstitutionally tried and the conviction was vitiated by error of constitutional dimension." 365 U. S. 534 at page 545.

In *Mapp v. Ohio*, 367 U. S. 643, this Court stressed the intimate relationship between the Fourth and Fifth Amendments, describing them as running "almost into each other" (367 U. S. 643 at page 646) and characterized the use of unconstitutionally seized physical evidence as "tantamount to coerced testimony." 367 U. S. 643 at page 656. After reviewing the history of enforcement by the state Courts of the right to be free from unlawful searches and seizures, the Court concluded that effective enforcement of that constitutional right requires that the same stringent rule be applied as in the case of coerced confessions. (367 U. S. 643 at page 657.)

The Louisiana Supreme Court, in *State v. Pickens*, 245 La. 680, 160 So. (2d) 577, stated that the rule in Louisiana regarding illegal search and seizure is as set forth by the Supreme Court of the United States in the case of *Ker v. State of California*, 374 U. S. 23, 83 S. Ct. 1623, 10 L. Ed. (2d) 726, as follows:

> "In Mapp v. Ohio, 367 U. S. (646-647, 657, 81 S. Ct. (1684), at 1686-1687, 1692-1693, 6 L. Ed. (2d) 1081, we followed Boyd v. United States, 116 U. S. 616, 630, 6 S. Ct. 624, 632, 29 L. Ed. 746

(1886), which held that the Fourth Amendment, implemented by the self-incrimination clause of the Fifth, forbids the Federal Government to convict a man of crime by using testimony or papers obtained from him by unreasonable searches and seizures as defined in the Fourth Amendment. We specifically held in Mapp that this constitutional prohibition is enforceable against the States through the Fourteenth Amendment. This means, as we said in Mapp, that the Fourth Amendment 'is enforceable' against them (the states) by the same sanction of exclusion as is used against the Federal Government; by the application of the same sanction of exclusion as is used against the Federal Government; by the application of the same constitutional standard prohibiting 'unreasonable searches and seizures.' 367 U. S. at 655, 81 S. Ct. at 1691, 6 L. Ed. (2d) 1081. * * *"

This rule has since been extended by this Court in the case of *Fahy v. Connecticut*, 375 U. S. 85, 84 S. Ct. 229, which holds that notwithstanding the fact that a State Court has determined that the admission of certain evidence was not prejudicial to the defendant and, was, therefore, harmless error, the conviction should nevertheless be reversed where it appeared that the evidence was obtained without a search warrant. In the *Fahy* case the defendant had been charged with desecration of a public building by painting swastikas on a synagogue. The arresting officer had seen a can of black paint and a paint brush in the defendant's automobile on the night that the painting occurred, and when he learned later of the paint-

ing, he went to the defendant's home and removed the evidence without a search warrant.

In the case at bar, the deputy sheriff, a day later, searched the car of the defendant, W. C. White, without advising the defendant of the reason for the search, or that an investigation was being made, or that he was suspected of having committed a crime, nor did the deputy have a search warrant.

II.

A New Trial Should be Granted Where it Appears That a Substantial Violation of a Constitutional Right has Occurred.

Although the Louisiana jurisprudence holds that, in order for the Louisiana Supreme Court to examine the evidence in a criminal case, it must be attached to and made a part of a perfected bill of exceptions, it also holds that constitutional rights prevail over those rights granted by a legislative or procedural act. This was held in the case of *State v. Doucet*, 199 La. 276, 5 So. (2d) 894.

L. S. A.-R.S. 15:457 provides, *inter alia*, that a new trial may be granted by the Supreme Court of Louisiana in any criminal case where, in the opinion of the Court, it appears that a substantial violation of a constitutional right has occurred.

We submit that there were substantial violations of constitutional rights guaranteed by both the Federal and State Constitutions. We also submit that the rights guaranteed to these defendants by both Constitutions

should not be denied because a procedural statute prohibits the Court from making a judgment thereon. To so hold makes the procedural statute supercede the provisions of the Constitution.

Not one of the cases cited in the original opinion rendered herein by the Louisiana Supreme Court contained a plea of the violation of constitutional rights of the defendants.

Furthermore, in one of the cited cases, *State v. Lebleu*, 14 So. (2d) 17, 203 La. 337, Justice Hamiter made this comment which is pertinent to our argument here:

> "While it is true that a bill of exceptions is necessary, in order to bring up evidence needful to a decision of the point raised, it is otherwise, if the issue is one of law exclusively."
>
> "The bill of exceptions, as said in the Criminal Code of Procedure, Article 498, 'is grounded in the objection made to the ruling of the Court on some purely incidental question arising during the progress of the cause; and involves the correctness of the conclusion drawn by the Court from the facts there cited in the bill.' "

This is exactly the point we are making here. The question of violation of constitutional rights, which was presented in the defendants' motion for a new trial, is a question of law. A contention that the constitutional rights of the defendants have been violated is far more than an incidental question arising during the course of the trial.

Therefore, the Supreme Court of Louisiana was in error for refusing to consider the record in this case and should be reversed and a new trial granted to petitioners.

CONCLUSION.

In conclusion, on the facts and law, we respectfully urge this Court to grant writs of certiorari herein for the reason that these petitioners will be deprived of their liberty without due process of law under the United States Constitution.

Respectfully submitted,

LLOYD F. LOVE,
LOVE AND HODGES,
Ferriday, Louisiana,
Counsel for Petitioners.

CERTIFICATE.

I hereby certify that a copy of the foregoing petition for writ of certiorari has been served on D. W. Gibson, District Attorney, Harrisonburg, La., Roy S. Halcomb, Assistant District Attorney, Ferriday, La., and Jack P. F. Gremillion, Attorney General, State of Louisiana, State Capitol Building, Baton Rouge, Louisiana, on this 22 day of June, 1965.

LLOYD F. LOVE.

APPENDIX "A".

R.S. 14:67.1:

Theft of cattle, horses, mules, sheep, hogs or goats is the misappropriation or taking of such cattle, horses, mules, sheep, hogs or goats belonging to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices or representations. An intent to deprive the other permanently of the cattle, horses, mules, sheep, hogs or goats is essential.

Whoever commits the crime of theft of cattle, horses, mules, sheep, hogs or goats shall be imprisoned at hard labor for not less than one nor more than ten years. As amended Acts 1956, No. 154, § 1.

R.S. 15:502:

No error not patent on the face of the record can be availed of after verdict, unless objection shall have been made at the time of the happening of such error and unless at the time of the ruling on the objection a bill of exceptions shall have been reserved to such adverse ruling.

APPENDIX "B".

Stamped: Monday, Jan. 18, 1965

Supreme Court of Louisiana

No. 47407

STATE OF LOUISIANA

versus

L. N. WILSON and W. C. WHITE

Appeal from the Seventh Judicial District Court, Parish of Catahoula; the Honorable Jesse C. McGee, Judge.

HAWTHORNE, J.

L. N. Wilson and W. C. White were charged with theft of a hog, a crime denounced by R.S. 14:67.1. They were tried and found guilty by a jury, and each was sentenced to one year in the penitentiary. They have appealed.

Appellants argue that they are entitled to a new trial on the ground that certain of their constitutional rights were violated, and they say that these violations are shown by testimony taken at the trial of the case. We cannot, however, inquire into the merits of this contention, for no bills of exception were reserved and perfected in the court below, and the evidence adduced during the trial is therefore not before us for consideration. It is well settled in the jurisprudence that evidence can be brought before this court in criminal cases only by incorporating it in or attaching it to a bill of exception, and that even though the evidence is in the transcript (as it is here), it

cannot be considered unless made part of or attached to a bill. State v. Lebleu, 203 La. 337, 14 So. (2d) 17; State v. Honeycutt, 218 La. 362, 49 So. (2d) 610; State v. Bellam, 225 La. 445, 73 So. (2d) 311; State v. Pitcher, 236 La. 1, 106 So. (2d) 695.

Thus we must confine our review in the instant case to a determination of whether there are errors patent on the face of the record. We find none here.

The conviction and sentence are therefore affirmed.

